

REMARKS

Claims 36-42 and 46-48 have been canceled and claim 43 has been amended to place the application in better form for examination and to further obviate the 35 U.S.C. §§102 and 112 rejections set forth in the Office Action dated February 12, 2004. It is believed that none of these amendments constitute new matter. Withdrawal of these rejections is requested.

The Examiner has objected to claims 43 and 47 for informalities. Applicant has amended claim 43 and claim 47 has been canceled. Withdrawal of this objection is respectfully requested.

Claims 46-48 are rejected under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement. Applicant has canceled claims 46-48. Accordingly, withdrawal of this rejection is respectfully requested.

Claims 43-47 are rejected under 35 U.S.C. §102(b) as being anticipated by Shibui et al. (Agric. Biol. Chem., 52 (4), 983-988 (1988)). Claims 46-47 have been canceled and claim 43 has been amended. Applicant submits that the amended claim 43 and dependent claims 44 and 45 are different from the method disclosed by Shibui et al. Shibui describes the construction and testing of a hybrid promoter "pac" which consists of mainly two elements from two different promoters. Shibui does not disclose using homologous regions to a template promoter nor aligning them using the template promoter. Shibui simply combines two elements from two different promoters and the resulting hybrid promoter does not have at least 60% homology over the entire length of a template promoter. Accordingly, withdrawal of this rejection is respectfully requested.

Claims 43, 44, 46 and 47 are rejected under 35 U.S.C. §102(b) as being anticipated by Vankan et al. (EMBO J., Vol. 8 (12): 3875-3882 (1989) (newly cited). Applicant submits Vankan describes the construction and testing of a synthetic promoter that consists of primarily two elements (USE and TATA) that are highly conserved amongst a certain gene family - the U2 and U5 snRNA genes of *Arabidopsis*. While the USE and TATA elements location within the synthetic promoter is the same as that in the U2 and U5 gene family, the intervening sequence is largely not homologous to the U2 and

U5 gene family, thus, the intervening sequence is not determined by a template promoter. Also, the resulting synthetic promoter of Vankan et al. is not at least 60% homologous to a template promoter over its entire length. Accordingly, withdrawal of this rejection is respectfully requested.

Claims 43-48 are rejected under 35 U.S.C. §102(e) as being anticipated by Muller (US Pat. No. 6,214,614). Applicant submits that Muller does not disclose the construction of a synthetic promoter that has at least 60% homology over the entire length to a template promoter. Withdrawal of this rejection is respectfully requested.

In view of the above amendments and remarks, it is submitted that the claims satisfy the provisions of 35 U.S.C. §§ 102 and 112 and are not obvious over the prior art. Reconsideration of this application and early notice of allowance is requested.

SIGNATURE OF APPLICANT, ATTORNEY OR AGENT REQUIRED					
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